



*Henry*  
Attorney General  
STATE CAPITOL  
Phoenix, Arizona 85007

Robert R. Corbin

November 7, 1980

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ARIZONA ATTORNEY GENERAL

Jack Williams, Esq.  
Graham County Attorney  
Graham County Courthouse  
Safford, Arizona 85546

RE: I80-189 (R80-189)

Dear Mr. Williams:

We have reviewed your opinion dated August 14, 1980, to Dr. M. Ray Evans, Superintendent of Safford Unified Schools, concerning the school district's disposition of certain frame buildings which the district has determined to be of no value for school purposes. Specifically, your opinion addresses whether these buildings can be given to a charitable organization for less than fair market value, whether the buildings might be sold without public election or formal bidding procedures and whether school employees may be used to demolish the buildings and salvage usable material. While concurring with your conclusions, we wish to state separately the reasons for our concurrence.

The buildings in question are described as "barracks-type" frame buildings which apparently have some marketable value. As you have stated, under these circumstances they cannot be donated to a charitable organization. However, our concurrence does not rest upon the absence of statutory authority for the district to donate property but upon the constitutional prohibition against such gifts. See Ariz. Con., Art. 9, §7.1/

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1/ § 7. Gift or loan of credit; subsidies;  
stock ownership; joint ownership

Section 7. Neither the State, nor any county, city, town, municipality, or other subdivision of the State shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or become a joint owner with any person, company or corporation, except as to such ownerships as may accrue to the State by operation or provision of law.

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See also, Yeazell v. Copins, 98 Ariz. 109, 402 P.2d 541 (1965);  
Prescott Community Hospital Commission v. Prescott School  
District, 57 Ariz. 492, 115 P.2d 160 (1941).

Dr. Evans also asked whether the buildings themselves constitute a "school site" so as to require an election to authorize their sale. A.R.S. § 15-442.A.13 requires that:

A. The board of trustees shall:

\* \* \*

13. Purchase or sell school sites when authorized by a vote of the district . . . .  
Such authorizations shall specify the purposes for which the proceeds of the sale of a school site shall be applied and the proceeds shall only be applied to those purposes.

As your opinion correctly points out, there is broad language in Ariz. Atty. Gen. Op. No. 79-194 stating that "it is our assumption that a school site includes any property which has been, or is being, used for school purposes, or which was purchased with the intent to be used for that purpose. Such property remains a school site indefinitely for purposes of requiring a vote of the electorate in order to sell it." Your opinion concludes that this language was not intended to cover personalty. We believe some clarification is necessary because our prior opinion was directed toward the effect of the passage of time and changing usage of school property. We did not address the issue of whether any distinction should be made between real and personal property.

The Legislature has not specifically made a distinction between real and personal property for purposes of permitting school districts to sell their property. The statute requires elections to sell "school sites."

While we have found no Arizona case law defining "school site," we have found a definition from another jurisdiction. In Board of Education v. Woodworth, 214 P.1077, 1083 (Okla. 1923), the Supreme Court of Oklahoma stated that:

School sites in this country embrace, not only the grounds upon which the school house is located, but the grounds surrounding the building used as playgrounds, and in referring

to the term "school sites" the ordinary acceptation of the term means, not only the ground upon which the building is located, but the grounds surrounding the building which is dedicated and used as a place of recreation for the children while attending school. . . . additional sites for "school buildings and playgrounds," meant sites for erection of buildings, and the necessary playgrounds surrounding said buildings . . ." (Emphasis added.)

Thus, it appears that Oklahoma has viewed the land upon which school buildings or other structures are located as being "school sites." This analysis is in harmony with the definition of site contained in Black's Law Dictionary (4th Ed. 1968) which states:

Site. A plot of ground suitable or set apart for some specific use. [citations omitted] A seat or ground plot. [citations omitted] . . .

A rigid application of this definition would permit district boards to sell any building without an election regardless of the nature of the building or the effect of its removal on the underlying land. We cannot state with certainty that this is the legislative intent of A.R.S. § 15-442.A.15. Neither do we believe that the test of "real" versus "personal" property is determinative of an election requirement. Were this the test, the board would have to determine whether any item attached to the land constitutes a fixture so as to become "real property."<sup>2/</sup>

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<sup>2/</sup> See, e.g. Fish v. Valley National Bank, 64 Ariz. 164, 170, 167 P.2d 107, 111 (1946), in which this test was described as follows:

The rule is for chattel to become a fixture and be considered as real estate, three requisites must unite: There must be an annexation to the reality or something of pertinent thereto; the chattel must have adaptability or application as a fix to the use for which the real estate is appropriated; and there must be an intention of the party to make the chattel a permanent accession to the freehold.

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This would be unnecessarily burdensome and does not appear to be required by the term "school site."

Under the narrow situation described in your letter, i.e., the structures involved are removable without impairing the value of the land and have economic value only as salvage, we believe these structures may be sold without the necessity of an election even though they may technically constitute real property. We believe the board has authority to do so pursuant to A.R.S. § 15-442.A.8 and 12.<sup>3/</sup>

We concur with your answer to the district's additional question concerning the manner of the sale itself. As you stated, there is no statutory requirement that the sale of the buildings be a public auction. However, we caution that the district is under a duty to utilize sound business practices to get the fair market value for its property. See Hertz Drive-UR Self System v. Tucson Airport Authority, 81 Ariz. 80, 299 P.2d 1071 (1956); Atty. Gen. Op. No. 75-143. Cf. Sulphur Springs Valley Electric Cooperative, Inc., v. City of Tombstone, 1 Ariz. App. 268, 401 P.2d 753 (1965). See also, Ariz.Att'yGen. Op. No. 75-11.

In determining the district's final question concerning the use of school employees to demolish the buildings, we must consider the applicability of A.R.S. § 34-201 et seq. requiring the state and its political subdivisions to bid certain building construction projects.<sup>4/</sup> A.R.S. § 34-201.C provides:

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<sup>3/</sup> A.R.S. § 15-442.A provides in part:

A. The board of trustees shall:

\* \* \*

8. Manage and control the school property in its district.

\* \* \*


<sup>4/</sup> A.R.S. § 34-201 et seq. has been made applicable to school districts by A.R.S. § 15-102.A.27. See also Secrist v. Diedrich, 6 Ariz.App. 102, 430 P.2d 448 (1967).

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"If the agent believes the work can be done more advantageously by day work or force account, any building, structure, addition or alteration not exceeding \$5,000 in total costs, may be constructed without advertising for bids."

If demolition will cost \$5,000 or less, it is clear that the school district may have this work performed by its own employees. If the demolition exceeds \$5,000, the question is whether demolition constitutes a "building, structure, addition or alteration." It may be argued for some purposes that demolition of a building constitutes an alteration. However, we do not believe this to be the intent of A.R.S. § 34-201.C. The phrase "may be constructed" appears to indicate that a structure will be the result of the work being performed. Additionally, although we have found no Arizona court decisions defining an "alteration," other jurisdictions have held "alteration" to mean changing a building in the sense of adding to, remodeling or reconstruction without destroying the identity of the thing affected. See, e.g., Commissioner of the District of Columbia v. Benenson 329 A. 2d 437 (D.C. Ct. App. 1974); Noyes v. Rothfeld 191 Misc. 672, 78 NYS 2d 433 (1947). We therefor concur with your conclusion that the district may use its own employees to demolish the buildings.

Very truly yours,

  
BOB CORBIN  
Attorney General

BC:MP:mea

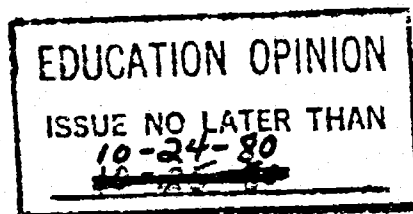
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PAUL H. McCULLAR  
CHIEF DEPUTY

DUDLEY S. WELKER  
CIVIL DEPUTY

August 14, 1980



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POLLARD  
R80- 189

Hon. Robert Corbin  
Attorney General  
State Capitol  
Phoenix, Arizona 85007

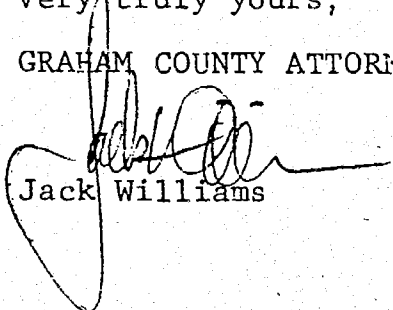
Dear Bob:

Enclosed is our school opinion dated August 14, 1980, advising Safford School District concerning disposition of certain property, which we are forwarding to you for your review pursuant to statute.

Your prompt attention to this matter will be appreciated.

Very truly yours,

GRAHAM COUNTY ATTORNEY

  
Jack Williams

JW/111

Enclosure

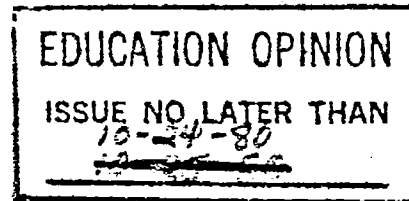
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POLLARD  
R80-189

Safford Unified Schools  
612 11th Street  
P. O. Box 960  
Safford, Arizona 85546

ATTN: Dr. M. Ray Evans, Superintendent

Gentlemen:

You have requested opinions concerning the following three subjects:

1. Whether certain barracks-type frame buildings, which presently have no value for school purposes, may be given to one or more charitable organizations in our community for less than fair market value.
2. In the event the buildings may not be given away, whether the buildings may be sold for removal without a public election and without formal bidding procedures.
3. Whether you may use school employees to demolish the buildings and salvage any usable material for use by the district or for sale.

My response is:

1. No.
2. Yes.
3. Yes.

Arizona Revised Statute, Section 15-442.A.13, provides that the Board may sell school sites only when authorized by a vote of the district; however, sub-paragraph A8 and A12 authorize the Board to manage and control school property within its district and to make in the name of the district conveyances of

property belonging to the district and sold by the Board. It is my opinion that reading the statute in its entirety, the intent is that the Board may manage and sell school property not amounting to "school sites" without an election. So the question is whether the no longer useful barracks structures, which are movable and could be sold as movable items of property, should not be classified as school sites and, therefore, the statutory provision for sale of school sites and Attorney General's opinion interpreting that statute do not apply in this case. I take this position in spite of the broad language of Attorney General's Opinion No. 179-194, which states, "It is our assumption that a school site includes any property which has been, or is being, used for school purposes, or which was purchased with the intent to be used for that purpose. Such property remains a school site indefinitely for purposes of requiring a vote of the electorate in order to sell it".

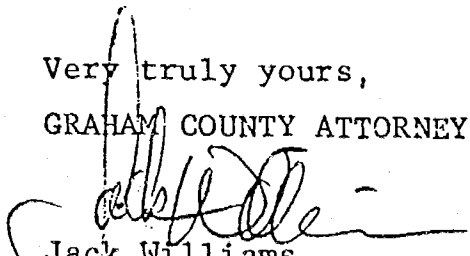
It is my conclusion in reading that opinion that it was in response to a question concerning the sale of surplus real property owned by a school district and that the term "any property" refers only to real property and not to personal property. My opinion is based further on my understanding that the barracks buildings, which are proposed to be sold, are movable without damaging the real estate upon which they are located and, in fact, that their removal will enhance the value of that real estate. In other words, where a school site is not being sold or transferred, an election is not required. Attorney General's Opinions No. 67-15-L and R-79-145.

Even though it is my opinion that any disposition of that movable property does not require an election, I know of no statutory authorization for the district to donate property to any charitable organization. Attorney General's Opinion No. R-75-164 states that "Good business practice might require that an appraisal be obtained to insure that property is not sold for less than its fair market value", in which I concur. The same Opinion provides that such a sale may be conducted without being advertised for bids and without the sale being conducted at a public auction, in which I likewise concur.

You also have the option of demolishing the buildings and selling or using the usable material resulting from the demolition. If you choose to take that course, you may use school employees to perform the work, and there is no requirement that the job be put out for bid. A.R.S. Section 34-201C, which provides that "any building structure, addition, or alteration" of \$5,000 or more in total cost, shall be constructed only after advertising for bids. However, this statute does not refer to demolition and therefore, in my opinion, does not apply.

Very truly yours,

GRAHAM COUNTY ATTORNEY

  
Jack Williams